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First Named Inventor	Brian J. Conaway
Art Unit	3618
Examiner Name	Bridget D. Avery
Attorney Docket Number	295509-00017-1

ENCLOSURES (Check all that apply)

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Firm Name	Eckert, Seamans Cherin & Mellott, LLC		
Signature			
Printed name	David C. Jenkins		
Date	July 23, 2007	Reg. No.	42,691

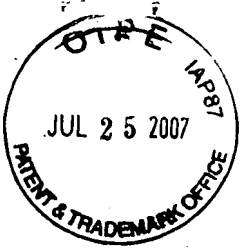
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**THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Examiner: Bridgett D. Avery

Group Art Unit: 3618

In re Application of:
Brian J. Conaway et al.

Serial No. 10/805,685

Filed: March 19, 2004

COLLAPSIBLE WHEELBARROW

Attorney Docket No. 295509-00017-1

APPELLANTS' RESPONSE TO NOTIFICATION OF NON-COMPLIANT BRIEF

July 23, 2007

Commissioner for Patents
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Dear Sir:

This is in response to the Notification of Non-Compliant Brief and an Appeal from the decision of the Examiner, dated March 9, 2007, rejecting Claims 23-25, 27-34 and 36-50 of the above-identified application. The claims are set forth in Appendix 1, which is attached hereto. Due to the specific nature of the issues involved in this Appeal, an Oral Hearing is not deemed necessary and is not requested.

Real Party In Interest

The real party in interest is Ames True Temper, Inc., the Assignee of record.

Related Appeals and Interferences

There are no other appeals or interferences known to Appellants or to Appellants' legal representative which will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

Status of the Claims

Claims 23-25, 27-34 and 36-50 are pending in this application.

Claims 1-22, 26 and 35 have been cancelled.

Claims 23, 25, 27, 28, 30-32, 36, 38-42, 46 and 47 are rejected under 35 U.S.C. § 102(b) as being anticipated by *Edhardt* (U.S. Patent 2,660,446).

Claims 24, 43-45 and 48-50 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Edhardt* ('446) in view of *Leger et al.* (U.S. Patent No. 5,908,202).

Claims 29 and 37 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Edhardt* ('446) in view of *Donze et al.* (U.S. Patent 5,026,079).

Claims 33 and 34 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Edhardt* ('446) in view of *Aielli* (U.S. Patent No. 6,186,523).

Status of the Amendments

There are currently no amendments to the pending claims. The claims as they stand on Appeal are contained in the Appendix 1 to this Brief.

Summary of the Claimed Subject Matter

The present invention provides a wheelbarrow (Ref. No. 300, page 19, line 23) that includes a front bracket (Ref. No. 44, page 9, line 2), a wheel (Ref. No. 34, page 8, line 21) rotatably secured to the front bracket (Ref. No. 44, page 9, line 2) and rotatable about a horizontal, laterally extending axis of rotation (Ref. No. 10, Page 10, line 11), and first and second handle arms (Ref. No. 144, Page 13, line 22) pivotably attached to the front bracket (Ref. No. 44, page 9, line 2). The first and second handle arms (Ref. No. 144, Page 13, line 22) are laterally pivotable about first and second pivot axes (Ref. No.

64, 66, Page 21, line 6) respectively. The first and second pivot axes (Ref. Nos. 64, 66, Page 21, line 6) are each spaced apart from the axis of rotation (Ref. No. 10, Page 10, line 11) of the wheel (Ref. No. 34, page 8, line 21).

The wheelbarrow (Ref. No. 300, page 19, line 23) may also include, in combination a rigid front bracket (Ref. No. 44, page 9, line 2), a wheel (Ref. No. 34, page 8, line 21) rotatably secured to the front bracket (Ref. No. 44, page 9, line 2) and rotatable about a horizontal, laterally extending axis of rotation (Ref. No. 10, Page 10, line 11), and first and second handle arms (Ref. No. 144, Page 13, line 22) pivotably attached to the front bracket (Ref. No. 44, page 9, line 2). The front bracket (Ref. No. 44, page 9, line 2) is generally U-shaped having a laterally extending front section and first and second laterally spaced-apart leg sections rearwardly extending from the front section and the first and second handle arms (Ref. No. 144, Page 13, line 22) pivotably attached to the front bracket (Ref. No. 44, page 9, line 2) at the first and second leg sections, respectively, so that the first and second handle arms (Ref. No. 144, Page 13, line 22) are laterally pivotable about first and second laterally spaced apart pivot axes (Ref. Nos. 64, 66, Page 21, line 6). Each of the leg sections include spaced apart upper and lower walls (Ref. Nos. 58, 60, Page 9, line 11) and the first and second handle arms (Ref. No. 144, Page 13, line 22) extend between the upper and lower walls (Ref. Nos. 58, 60, Page 9, line 11).

The wheelbarrow (Ref. No. 300, page 19, line 23) may also include, in combination, a rigid front bracket (Ref. No. 44, page 9, line 2), a wheel (Ref. No. 34, page 8, line 21) rotatably secured to the front bracket (Ref. No. 44, page 9, line 2) and rotatable about a horizontal, laterally extending axis of rotation (Ref. No. 10, Page 10, line 11), first and second handle arms (Ref. No. 144, Page 13, line 22) pivotably attached to the front bracket (Ref. No. 44, page 9, line 2), and a rigid tray (Ref. No. 16, page 7, line 8-9). A clamping device (Ref. No. 40, page 15, line 17) removably applies a clamping force between the first and second handle arms (Ref. No. 144, Page 13, line 22) and clamps the tray (Ref. No. 12, Page 7, line 7) between the first and second handle arms (Ref. No. 144, Page 13, line 22).

The wheelbarrow (Ref. No. 300, page 19, line 23) may also include, in combination, a rigid front bracket (Ref. No. 44, page 9, line 2), a wheel (Ref. No. 34, page 8, line 21) rotatably secured to the front bracket (Ref. No. 44, page 9, line 2) and rotatable about a horizontal, laterally extending axis of rotation (Ref. No. 10, Page 10, line 11), first and second handle arms (Ref. No. 144, Page 13, line 22) pivotably attached to the front bracket (Ref. No. 44, page 9, line 2), and a rigid tray (Ref. No. 16, page 7, line 8-9) removably secured to the first and second handle arms (Ref. No. 144, Page 13, line 22). The tray (Ref. No. 12, Page 7, line 7) is interconnected with the first and second arms to permit relative movement therebetween in a lateral direction and to prevent relative movement therebetween in a forward rearward direction.

The claims addressed in this appeal include the following:

1. to 22. (cancelled)

23. (previously presented) A wheelbarrow (Ref. No. 300, page 19, line 23) comprising, in combination:

a rigid front bracket (Ref. No. 44, page 9, line 2);

a wheel (Ref. No. 34, page 8, line 21) rotatably secured to the front bracket (Ref. No. 44, page 9, line 2) and rotatable about a horizontally, laterally extending axis of rotation (Ref. No. 10, Page 10, line 11);

first and second handle arms (Ref. No. 144, Page 13, line 22) pivotably attached to the front bracket (Ref. No. 44, page 9, line 2);

a rigid tray (Ref. No. 16, page 7, line 8-9); and

a clamping device (Ref. No. 40, page 15, line 17) extending between the first and second handle arms (Ref. No. 144, Page 13, line 22) and removably applying a laterally-extending clamping force between the first and second handle arms (Ref. No. 144, Page 13, line 22) to move the first and second handle arms (Ref. No. 144, Page 13, line 22) relative to one another in a lateral direction and clamp the tray (Ref. No. 12, Page 7, line 7) between the first and second handle arms (Ref. No. 144, Page 13, line 22).

24. (original) The wheelbarrow (Ref. No. 300, page 19, line 23) according to claim 23, wherein the clamping device (Ref. No. 40, page 15, line 17) includes a flexible cable (Ref. No. 180, page 16, line 11) extending between the first and second handle arms (Ref. No. 144, Page 13, line 22).

25. (original) The wheelbarrow (Ref. No. 300, page 19, line 23) according to claim 23, wherein the clamping device (Ref. No. 40, page 15, line 17) includes a rigid rod extending between the first and second handle arms (Ref. No. 144, Page 13, line 22).

26. (cancelled)

27. (original) The wheelbarrow (Ref. No. 300, page 19, line 23) according to claim 23, wherein the tray (Ref. No. 12, Page 7, line 7) is interconnected with the first and second handle arms (Ref. No. 144, Page 13, line 22) to permit relative movement therebetween in a lateral direction and to prevent relative movement therebetween in each direction other than the lateral direction.

28. (original) The wheelbarrow (Ref. No. 300, page 19, line 23) according to claim 23, wherein the first and second handle arms (Ref. No. 144, Page 13, line 22) are laterally pivotably about the first and second spaced apart pivot axes (Ref. Nos. 64, 66, Page 21, line 6) respectively and the first and second pivot axes (Ref. No. 64, 66, Page 21, line 6) are laterally spaced apart.

29. (original) The wheelbarrow (Ref. No. 300, page 19, line 23) according to claim 23, wherein the first and second handle arms (Ref. No. 144, Page 13, line 22) each include telescoping upper and lower arms (Ref. Nos. 86, 88, 90, 92, page 1, line 22) so that the upper arms (Ref. Nos. 86, 88 page 1, line 22) are selectively movable between extended and retracted positions.

30. (original) The wheelbarrow (Ref. No. 300, page 19, line 23) according to claim 23, wherein the front bracket (Ref. No. 44, page 9, line 2) is generally U-shaped having a laterally extending front section and first and second laterally spaced apart leg sections rearwardly extending from the front section and the first and second handle arms (Ref. No. 144, Page 13, line 22) are pivotably attached to the front bracket (Ref. No. 44, page 9, line 2) at the first and second leg sections respectively.

31. (previously presented) A wheelbarrow (Ref. No. 300, page 19, line 23) comprising, in combination:

- a rigid front bracket (Ref. No. 44, page 9, line 2);

- a wheel (Ref. No. 34, page 8, line 21) rotatably secured to the front bracket (Ref. No. 44, page 9, line 2) and rotatable about a horizontally, laterally extending axis of rotation (Ref. No. 10, Page 10, line 11);

- first and second handle arms (Ref. No. 144, Page 13, line 22) pivotably attached to the front bracket (Ref. No. 44, page 9, line 2);

- a rigid tray (Ref. No. 16, page 7, line 8-9) removably secured to first and second handle arms (Ref. No. 144, Page 13, line 22);

- wherein the tray (Ref. No. 12, Page 7, line 7) is interconnected with the first and second handle arms (Ref. No. 144, Page 13, line 22) to permit relative movement therebetween in a lateral direction and to prevent relative movement therebetween in a forward-rearward direction; and

- a clamping device (Ref. No. 40, page 15, line 17) extending between the first and second handle arms (Ref. No. 144, Page 13, line 22) and removably applying a laterally-extending a clamping force between the first and second handle arms (Ref. No. 144, Page 13, line 22) to move the first and second handle arms (Ref. No. 144, Page 13, line 22) relative to one another in a lateral direction and clamp the tray (Ref. No. 12, Page 7, line 7) between the first and second handle arms (Ref. No. 144, Page 13, line 22).

32. (original) The wheelbarrow (Ref. No. 300, page 19, line 23) according to claim 31, wherein the tray (Ref. No. 12, Page 7, line 7) is interconnected with the first and second handle arms (Ref. No. 144, Page 13, line 22) to permit relative movement therebetween in a lateral direction and to prevent relative movement therebetween in each direction other than the lateral direction.

33. (original) The wheelbarrow (Ref. No. 300, page 19, line 23) according to claim 31, wherein the tray (Ref. No. 12, Page 7, line 7) has tabs (Ref. No. 30, page 8, line 5) extending laterally outward and the first and second handle arms (Ref. No. 144, Page 13, line 22) have slots (Ref. No. 116, page 11, line 22) receiving the tabs (Ref. No. 30, page 8, line 5).

34. (original) The wheelbarrow (Ref. No. 300, page 19, line 23) according to claim 31, wherein the tray (Ref. No. 12, Page 7, line 7) has rails (Ref. No. 302, page 20, line 10) extending laterally outward and the first and second handle arms (Ref. No. 144, Page 13, line 22) have grooves (Ref. No. 302, page 20, line 28) receiving the rails (Ref. No. 302, page 20, line 10).

35. (cancelled)

36. (original) The wheelbarrow (Ref. No. 300, page 19, line 23) according to claim 31, wherein the first and second handle arms (Ref. No. 144, Page 13, line 22) are laterally pivotable about the first and second spaced apart pivot axes (Ref. Nos. 64, 66, Page 21, line 6) respectively and the first and second pivot axes (Ref. No. 64, 66, Page 21, line 6) are laterally spaced apart.

37. (original) The wheelbarrow (Ref. No. 300, page 19, line 23) according to claim 31, wherein the first and second handle arms (Ref. No. 144, Page 13, line 22) each include telescoping upper and lower arms (Ref. Nos. 86, 88, 90, 92, page 1, line 22) so

that the upper arms (Ref. Nos. 86, 88, page 1, line 22) are selectively movable between extended and retracted positions.

38. (original) The wheelbarrow (Ref. No. 300, page 19, line 23) according to claim 31, wherein the front bracket (Ref. No. 44, page 9, line 2) is generally U-shaped having a laterally extending front section and first and second laterally spaced apart leg sections rearwardly extending from the front section and the first and second handle arms (Ref. No. 144, Page 13, line 22) are pivotably attached to the front bracket (Ref. No. 44, page 9, line 2) at the first and second leg sections respectively.

39. (previously presented) The wheelbarrow (Ref. No. 300, page 19, line 23) according to claim 23, wherein the clamping force is adjustable.

40. (previously presented) The wheelbarrow (Ref. No. 300, page 19, line 23) according to claim 31, wherein the clamping force is adjustable.

41. (previously presented) The wheelbarrow (Ref. No. 300, page 19, line 23) according to claim 23, wherein the laterally-extending damping force is applied in a direction substantially parallel to the axis of rotation (Ref. No. 10, Page 10, line 11) of the wheel (Ref. No. 34, page 8, line 21).

42. (previously presented) The wheelbarrow (Ref. No. 300, page 19, line 23) according to claim 23, wherein the clamping force pulls the first and second handle arms (Ref. No. 144, Page 13, line 22) toward one another to clamp the tray (Ref. No. 12, Page 7, line 7) between the first and second handle arms (Ref. No. 144, Page 13, line 22).

43. (previously presented) The wheelbarrow (Ref. No. 300, page 19, line 23) according to claim 23, wherein the clamping device (Ref. No. 40, page 15, line 17) includes a tension member (Ref. No. 180, page 16, line 11) laterally extending between

the first and second handle arms (Ref. No. 144, Page 13, line 22) and having an adjustable length to selectively apply a tension force between the first and second handle arms (Ref. No. 144, Page 13, line 22) and clamp the tray (Ref. No. 12, Page 7, line 7) between the first and second handle arms (Ref. No. 144, Page 13, line 22).

44. (previously presented) The wheelbarrow (Ref. No. 300, page 19, line 23) according to claim 43, wherein the tension member includes a flexible cable extending between the first and second handle arms (Ref. No. 144, Page 13, line 22) in a lateral direction substantially parallel to the axis of rotation (Ref. No. 10, Page 10, line 11) of the wheel (Ref. No. 34, page 8, line 21).

45. (previously presented) The wheelbarrow (Ref. No. 300, page 19, line 23) according to claim 43, wherein the clamping device (Ref. No. 40, page 15, line 17) includes a rotatable handle that increases and decreases the effective length of the tension member depending on the direction of rotation.

46. (previously presented) The wheelbarrow according to claim 31, wherein the laterally-extending clamping force is applied in a direction substantially parallel to the axis of rotation (Ref. No. 10, Page 10, line 11) of the wheel (Ref. No. 34, page 8, line 21).

47. (previously presented) The wheelbarrow (Ref. No. 300, page 19, line 23) according to claim 31, wherein the clamping force pulls the first and second handle arms (Ref. No. 144, Page 13, line 22) toward one another to clamp the tray (Ref. No. 12, Page 7, line 7) between the first and second handle arms (Ref. No. 144, Page 13, line 22).

48. (previously presented) The wheelbarrow (Ref. No. 300, page 19, line 23) according to claim 31, wherein the clamping device (Ref. No. 40, page 15, line 17) includes a tension member laterally extending between the first and second handle arms (Ref. No. 144, Page 13, line 22) and having an adjustable length to selectively apply a

tension force between the first and second handle arms (Ref. No. 144, Page 13, line 22) and clamp the tray (Ref. No. 12, Page 7, line 7) between the first and second handle arms (Ref. No. 144, Page 13, line 22).

49. (previously presented) The wheelbarrow (Ref. No. 300, page 19, line 23) according to claim 48, wherein the tension member includes a flexible cable (Ref. No. 180, page 16, line 11) extending between the first and second handle arms (Ref. No. 144, Page 13, line 22) in a lateral direction substantially parallel to the axis of rotation (Ref. No. 10, Page 10, line 11) of the wheel (Ref. No. 34, page 8, line 21).

50. (previously presented) The wheelbarrow (Ref. No. 300, page 19, line 23) according to claim 48, wherein the clamping device (Ref. No. 40, page 15, line 17) includes a rotatable handle that increases and decreases the effective length of the tension member depending on the direction of rotation.

Grounds of Rejection to be Reviewed on Appeal

Claims 23, 25, 27, 28, 30-32, 36, 38-42, 46 and 47 stand rejected under 35 U.S.C. § 102(b) as being anticipated by *Edhardt* (U.S. Patent 2,660,446).

Claims 24, 43-45 and 48-50 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Edhardt* ('446) in view of *Leger et al.* (U.S. Patent No. 5,908,202).

Claims 29 and 37 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Edhardt* ('446) in view of *Donze et al.* (U.S. Patent 5,026,079).

Claims 33 and 34 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Edhardt* ('446) in view of *Aielli* (U.S. Patent No. 6,186,523).

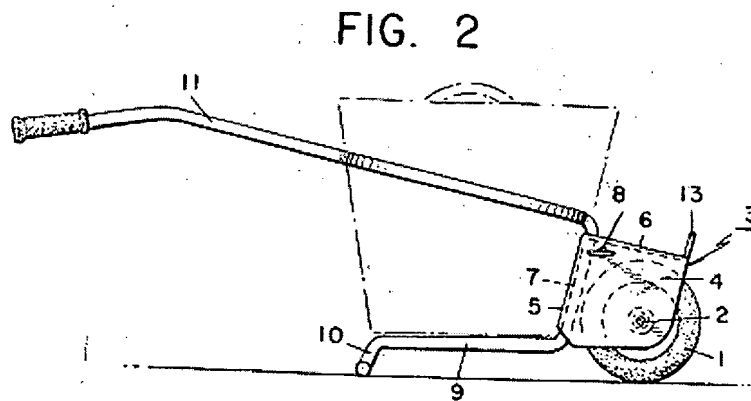
Argument

Claims 23, 25, 27, 28, 30-32, 36, 38-42, 46 and 47; Rejected under 35 U.S.C. § 102(b)

Claims 23, 25, 27, 28, 30-32, 36, 38-42, 46 and 47 are rejected under 35 U.S.C. § 102(b) as being anticipated by *Edhardt* (U.S. Patent 2,660,446). *Edhardt* discloses a

folding wheelbarrow having a frame assembly and removable basket. The assembly includes a rigid forward assembly structured to rotatably support a wheel. The forward assembly further includes a pair of bearings (not shown). *See*, Col. 1, line 30. The frame assembly also includes a pair of mirror image handlebars (11) which bend into inclined shafts (7) and then into support/feet (9/10). The inclined shaft passes through the bearing and is rotatable therein. Col. 1, lines 26-34. The bearings include a clamp (8) structured to prevent the inclined shaft from rotating. *Id.* The Examiner asserts that such a clamp corresponds to a “clamping device extending between the first and second handle arms and removably applying a laterally-extending clamping force between the first and second handle arms to move the first and second handle arms relative to one another in a lateral direction and clamp the tray between the first and second handle arms” as recited in Claims 22 and 31. Appellants disagree.

First, the *Edhardt* clamping means is described as merely a “bolt and a winged nut” that is coupled to a bearing that “is not shown in detail.” Col. 1, lines 30-34. Further the clamping means is shown “diagrammatically.” Col. 1, line 34. As shown below, the clamping device is coupled to a side plate 4 and does not appear to connect to,



or extend between, the handle members (11) or the inclined shafts (7).

Given these facts, Appellants assert that the lack of detail in the *Edhardt* clamping means render the reference non-operable. That is, as set forth in MPEP § 2121.01, “The disclosure in an assertedly anticipating reference must provide an enabling disclosure of the desired subject matter; mere naming or description of the subject matter is insufficient, if it cannot be produced without undue experimentation.” *Id.*, citing *Elan Pharm., Inc. v. Mayo Found. For Med. Educ. & Research*, 346 F.3d 1051, 1054, 68 USPQ2d 1373, 1376 (Fed. Cir. 2003). Here the reference merely states that there is a clamping device that has a “bolt and a winged nut.” The clamping device is shown “diagrammatically” in one out of three figures, and that view is merely a side view of a winged nut located somewhere near the inclined shaft. Moreover, the “bearing” that the clamping device works upon is not shown at all. As such, one skilled in the art could not reproduce such a clamping device without undue experimentation. Accordingly, the *Edhardt* reference is not an enabling reference and cannot be used as the basis for a rejection under 35 U.S.C. § 102(b).

Further, the *Edhardt* clamping means is described as limiting the rotation of the inclined shaft within the bearing. “Limiting rotation” vaguely suggests that the clamping device causes the bearing to tighten on the inclined shaft. By limiting rotation, the handles/inclined shafts are maintained in a selected orientation. Maintaining an element in a selected orientation is different than “applying a laterally-extending clamping force between the first and second handle arms to move the first and second handle arms relative to one another in a lateral direction” as recited in Claims 22 and 31. That is, if the *Edhardt* clamping means holds the handles in a fixed orientation by limiting the rotation, the handles cannot exert a lateral clamping force. This conclusion is further supported by the specification which fails to describe a lateral force on the basket, but does state that the basket is carried by the supports (9). Col. 1, lines 35-36. That is, the supports (9) hold the basket, and not the handles (11).

Also, given the lack of detail in the *Edhardt* disclosure and Figures, there is no indication that the *Edhardt* clamping means extends “between the first and second handle arms” as recited in Claims 23 and 31. That is, a clamping means having a bolt and a

winged nut wherein the bolt extended from the first and second handle arms would merely draw the arms together when the winged nut was tightened. Such a device would not “prevent the inclined shaft from rotating” as described in the *Edhardt* specification. As such, there is at least an implication that the *Edhardt* clamping means acts on an individual bearing and does not extend between the first and second handle arms. Moreover, as noted above, the *Edhardt* clamping means is shown as being connected to the side plates (4) and not to the handles/inclined shafts (11/7).

Further, the *Edhardt* reference discloses that the basket is merely supported by the supports (9) as opposed to being “removably secured” thereto. As set forth in the attached definitions, the word “secured” means “positioned or fixed firmly,” “to make fast <secure a door> <secure a bike to a tree>,” or, “firmly fastened.” Cambridge Online Dictionary, at <http://dictionary.cambridge.org/define.asp?key=71111&dict=CALD>; Merriam-Webster Online Dictionary, at <http://www.m-w.com/cgi-bin/dictionary>; American Heritage Dictionary of the English Language, at <http://www.bartleby.com/61/97/S0209700.html> (attached hereto in the Evidence Appendix as Exhibits A, B, and C). These definitions conform to the use of the word “secure” in the present application which discloses outwardly extending lateral tabs being inserted into slots and having a lateral clamping force applied thereto. The *Edhardt* reference, however, merely discloses a basket sitting on supports. The basket is not coupled to the supports, or the handle members, by any type of coupling device. As such, it cannot reasonably be said that the *Edhardt* reference discloses a tray/basket that is “removably secured” to the handle arm as recited in Claim 31 of the present application.

Similarly, the *Edhardt* reference fails to disclose that the front bracket has a laterally extending front section. That is, the *Edhardt* bracket is a U-shaped bracket that has two side plates (4) and a top plate (6) and extends over the wheel. In this configuration, the front side of the bracket is open. As set forth in Claims 30 and 38 of the present application, the front bracket is U-shaped and has a laterally extending front section and two rearwardly extending legs. Simply put, the brackets have a different

orientation and, as the orientation of the bracket is recited in the claims, the present claims do not read upon the *Edhardt* reference.

As stated in MPEP §2131:

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.... The identical invention must be shown in as complete detail as is contained in the ... claim.

Verdigaal Brothers v. Union Oil Company of California, 814 F.2d 628, 631 (Fed. Cir. 1987) and *Richardson v. Suzuki Motor Company*, 868 F.2d 1226, 1236, (Fed. Cir. 1989). It is respectfully submitted that upon reading the *Edhardt* reference one skilled in the art would not consider a wheelbarrow having a clamping device applying a laterally-extending clamping force between the first and second handle arms to move the first and second handle arms relative to one another in a lateral direction.

Independent Claim 23 recites a wheelbarrow having a clamping device applying a laterally-extending clamping force between the first and second handle arms to move the first and second handle arms relative to one another in a lateral direction. As this reference fails to disclose a wheelbarrow having a clamping device applying a laterally-extending clamping force between the first and second handle arms to move the first and second handle arms relative to one another in a lateral direction, this reference cannot be used to support a rejection under 35 U.S.C. § 102(b) and the rejection of Claim 23 should be reversed.

Claim 25, which depends from Claim 23, further recites that the clamping device includes a rigid rod extending between the first and second handle arms. As this reference fails to disclose a clamping device that includes a rigid rod extending between the first and second handle arms, this reference cannot be used to support a rejection under 35 U.S.C. § 102(b) and the rejection of Claim 25 should be reversed.

Claims 27 and 28 each depend from Claim 23 and rely upon their dependency for patentability.

Claim 30, which depends from Claim 23, further recites that the front bracket is generally U-shaped and has a laterally extending front section. As this reference fails to disclose a front bracket that is generally U-shaped and has a laterally extending front section, this reference cannot be used to support a rejection under 35 U.S.C. § 102(b) and the rejection of Claim 30 should be reversed.

Independent Claim 31 recites a wheelbarrow having a clamping device applying a laterally-extending clamping force between the first and second handle arms to move the first and second handle arms relative to one another in a lateral direction and a tray removably secured to the first and second handle arms. As this reference fails to disclose a wheelbarrow having a clamping device applying a laterally-extending clamping force between the first and second handle arms to move the first and second handle arms relative to one another in a lateral direction and a tray removably secured to the first and second handle arms, this reference cannot be used to support a rejection under 35 U.S.C. § 102(b) and the rejection of Claim 31 should be reversed.

Claims 32 and 36 each depend from Claim 31 and rely upon their dependency for patentability.

Claim 38, which depends from Claim 31, further recites that the front bracket is generally U-shaped and has a laterally extending front section. As this reference fails to disclose a front bracket that is generally U-shaped and has a laterally extending front section, this reference cannot be used to support a rejection under 35 U.S.C. § 102(b) and the rejection of Claim 38 should be reversed.

Claims 39, 41 and 42 each depend from Claim 23 and rely upon their dependency for patentability.

Claims 40, 46, and 47 each depend from Claim 31 and rely upon their dependency for patentability.

Accordingly, the rejections of Claims 23, 25, 27, 28, 30-32, 36, 38-42, 46 and 47 under 35 U.S.C. § 102(b) as being anticipated by *Edhardt* should be reversed.

Claims 24, 43-45 and 48-50; Rejected under 35 U.S.C. § 103(a)

Claims 24, 43-45 and 48-50 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Edhardt* ('446) in view of *Leger et al.* (U.S. Patent No. 5,908,202). The deficiencies of *Edhardt* as a reference are discussed above. *Leger* discloses a collapsible wheelbarrow having a flexible container or tray. That is, the container is made from a fabric and is supported by a plurality of tension members. The tension members are inelastic. (Col. 9, lines 24-28). The *Leger* wheelbarrow also has a folding frame assembly having separate handle members and leg members. The frame assembly further includes a latching assembly (Col. 9, line 28 - Col. 10, line 41) between the handle members having links that move between a first, folded position and a second, over-toggle position. In this configuration, the tension members merely support the container. That is, the tension members have a fixed length and do not apply a clamping force on the handles. The force that holds the wheelbarrow in the expanded configuration is created by a latching assembly that separates the handles while the fabric of the container provides a reactionary force. As set forth at Col. 10, lines 20-41, the elasticity of the fabric creates the reactionary force. The inelastic tension members do not play a part in the latching mechanism. That is, any clamping/reactionary force is created by the latching device and the fabric container and not by the tension members. The tension members merely support the upper edges and the front side of the fabric container.

Thus, as described above, *Edhardt* discloses a frame assembly having a clamping means structured to limit the rotation of the inclined shaft within the bearing. *Leger*, on the other hand, discloses a latching assembly that cooperates with a fabric container to create a separating force and a reactionary force. Because these two types of forces, anti-rotational and separating/reactionary force, are different, the combination proposed by the Examiner would require the substantial modification of the operating principle of at least one of the references. However, as set forth in MPEP § 2143.01 VI, "[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not

sufficient to render the claims *prima facie* obvious.” *Id.*, citing *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

Further, as noted at MPEP § 2143.01 V, “[i]f proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.” *Id.*, citing *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). Here, the *Leger* device relies upon a constant tension, created by the fabric container, to maintain the latch device in an over-toggle position. The *Edhardt* clamping means is structured to limit the rotation of the frame assembly. That is, the *Edhardt* clamping means locks the frame assembly in a set orientation. If the frame is set in a specific orientation, there is no tension between the frame assembly and the container/basket. Similarly, as described above, the *Edhardt* basket merely rests upon the frame assembly support members. Conversely, the *Leger* fabric container is directly coupled to the frame assembly so as to provide the required reactionary force. If the free standing basket of *Edhardt* was incorporated into the *Leger* frame assembly, the basket would not provide the required reactionary force.

Further, in *KSR International Co. v. Teleflex Inc.*, ___ U.S. ___, ___, 2007 WL 1237837 (2007), the Supreme Court stated the following with respect to the determination of obviousness under 35 U.S.C. § 103:

[A] patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. Although common sense directs one to look with care at a patent application that claims as innovation the combination of two known devices according to their established functions, *it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does*. This is so because inventions in most, if not all, instances rely on building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known.

Id., at 14 (emphasis added).

In addition, the Supreme Court further noted that:

Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community

or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, *all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue*. To facilitate review, this analysis should be made explicit. See *In re Kahn*, 441 F.3d 977, 988 (Fed Cir. 2006) (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinnings to support the legal conclusion of obviousness”).

Id., at ____ (emphasis added).

However, in the March 9, 2007 Office Action the Examiner has only supported the proposed combination of references by “mere conclusory statements.” That is, as set forth on page 3 of the March 9, 2007 Office Action, the Examiner, after identifying selected elements of the cited references, states that “it would have been obvious to one having ordinary skill in the art, at the time the invention was made, to replace the bolt with a flexible cable to facilitate folding of the wheelbarrow when the tray is removed.” Such a statement is a mere conclusion of what may be done with a wheelbarrow based upon the proposed combination of references. Such a statement does not, however, identify an “articulated reasoning with some rational underpinnings” as to why one skilled in the art would make such a combination. That is, *Edhardt* discloses a folding wheelbarrow. The Examiner has not presented evidence to suggest that this folding wheelbarrow was deficient in any manner and was incapable of being “folded.” As such, the Examiner has not provided an apparent reason as to why one skilled in the art would need to remove the simple bolt disclosed in *Edhardt* and replace that bolt with the more complicated system of cables disclosed in *Leger* in order to “facilitate folding.”

Accordingly, for these reasons, the combination proposed by the Examiner is not appropriate and the Examiner has failed to present a *prima facie* case of obviousness.

Claim 24, which depends from Claim 23, recites a wheelbarrow having a clamping device applying a laterally-extending clamping force between the first and second handle arms to move the first and second handle arms relative to one another in a lateral direction, wherein the clamping device includes a flexible cable. As these references cannot be combined as suggested by the Examiner and because the individual

references fail to suggest a wheelbarrow having a clamping device applying a laterally-extending clamping force between the first and second handle arms to move the first and second handle arms relative to one another in a lateral direction, wherein the clamping device includes a flexible cable, these references cannot be used to support a rejection under 35 U.S.C. § 103(a) and the rejection of Claim 24 should be reversed.

Claim 43, which depends from Claim 23, recites that the clamping device includes a tension member having an adjustable length. As the Examiner states that *Edhardt* fails to disclose or suggest a flexible cable and as *Leger* states that the tension members are inelastic, neither cited reference discloses a tension member having an adjustable length. Moreover, as these references cannot be combined as suggested by the Examiner, these references cannot be used to support a rejection under 35 U.S.C. § 103(a) and the rejection of Claim 43 should be reversed.

Claim 44 depends from Claim 43 and relies upon its dependency for patentability.

Claim 45, which depends from Claim 43, recites that the clamping device includes a handle that increase/decreases the effective length of the tension member. As the Examiner states that *Edhardt* fails to disclose or suggest a flexible cable and as *Leger* states that the tension members are inelastic, neither cited reference discloses that the clamping device includes a handle that increases/decreases the effective length of the tension member. Moreover, as these references cannot be combined as suggested by the Examiner, these references cannot be used to support a rejection under 35 U.S.C. § 103(a) and the rejection of Claim 45 should be reversed.

Claim 48, which depends from Claim 31, recites that the clamping device includes a tension member having an adjustable length. As the Examiner states that *Edhardt* fails to disclose or suggest a flexible cable and as *Leger* states that the tension members are inelastic, neither cited reference discloses a tension member having an adjustable length. Moreover, as these references cannot be combined as suggested by the Examiner, these references cannot be used to support a rejection under 35 U.S.C. § 103(a) and the rejection of Claim 48 should be reversed.

Claim 49 depends from Claim 48 and relies upon its dependency for patentability.

Claim 50, which depends from Claim 48, recites that the clamping device includes a handle that increases/decreases the effective length of the tension member. As the Examiner states that *Edhardt* fails to disclose or suggest a flexible cable and as *Leger* states that the tension members are inelastic, neither cited reference discloses that the clamping device includes a handle that increases/decreases the effective length of the tension member. Moreover, as these references cannot be combined as suggested by the Examiner, these references cannot be used to support a rejection under 35 U.S.C. § 103(a) and the rejection of Claim 50 should be reversed.

Accordingly, the rejections of Claims 24, 43-45 and 48-50 under 35 U.S.C. § 103(a) as being unpatentable over *Edhardt* in view of *Leger* should be reversed.

Claims 29 and 37; Rejected under 35 U.S.C. § 103(a)

Claims 29 and 37 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Edhardt* '446 in view of *Donze et al.*, U.S. Patent No. 5,026,079. The deficiencies of *Edhardt* as a reference are discussed above. *Donze* discloses a non-collapsible wheelbarrow having adjustable handles. As set forth at Col. 4, lines 1-11, the *Donze* wheelbarrow handle members are adjustable to a variety of positions for use “depending upon the stature of the user so as to avoid an uncomfortable working position.” These positions, however, are all “working positions.” That is, the wheelbarrow of the present application, is structured to be converted between a working configuration and a storage configuration. In the storage configuration, the upper arms are moved into a retracted position. As used in the specification, a “retracted position” is not a “working position” as set forth in *Donze*.

As noted above, the Supreme Court in *KSR International Co.* stated that it can be, “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does. ... [And] it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in

order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit. ... [R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinnings to support the legal conclusion of obviousness.”

In the March 9, 2007 Office Action, the Examiner has only supported the proposed combination of references by “mere conclusory statements.” That is, as set forth on page 4 of the March 9, 2007 Office Action, the Examiner, after identifying selected elements of the cited references, states that, “it would have been obvious to one having ordinary skill in the art, at the time the invention was made, to replace the handle arms taught by *Edhardt* with telescoping arms to allow for easier storage during transportation of the wheelbarrow and to permit the height or position of the handle arm to be adjusted depending upon the stature of the user so as to avoid an uncomfortable working position.” Such a statement is a mere conclusion of what may be done with a wheelbarrow based upon the proposed combination of references. Such a statement does not, however, identify an “articulated reasoning with some rational underpinnings” as to why one skilled in the art would make such a combination. That is, *Edhardt* discloses a folding wheelbarrow with arms having a downwardly bent distal end. The Examiner has not presented any evidence to suggest that the *Edhardt* handles are uncomfortable for a user. Further, the *Edhardt* handles may be collapsed into a narrow configuration as shown in ghost in Figure 1. The Examiner has not presented any evidence that such a configuration is inconvenient for storage or transportation. As the *Edhardt* handles have a configuration that occupies a reduced amount of space and a downward bend to accommodate users of different heights, the Examiner has not provided an apparent reason as to why one skilled in the art would need to remove the simple handles disclosed in *Edhardt* and replace the handles with the more complicated telescoping handles of *Donze*.

Claim 29, which depends from Claim 23, recites that the handle arms include an upper arm and a lower arm and that the upper arm may be moved into a retracted

position. As the Examiner states that *Edhardt* fails to disclose telescoping arms and as *Donze* fails to disclose a handle having a retracted position, and as these references cannot be combined as suggested by the Examiner, these references cannot be used to support a rejection under 35 U.S.C. § 103(a) and the rejection of Claim 29 should be reversed.

Claim 37, which depends from Claim 31, recites that the handle arms include an upper arm and a lower arm and that the upper arm may be moved into a retracted position. As the Examiner states that *Edhardt* fails to disclose telescoping arms and as *Donze* fails to disclose a handle having a retracted position, and as these references cannot be combined as suggested by the Examiner, these references cannot be used to support a rejection under 35 U.S.C. § 103(a) and the rejection of Claim 37 should be reversed.

Accordingly, the rejections of Claims 29 and 37 under 35 U.S.C. § 103(a) as being unpatentable over *Edhardt* in view of *Donze* should be reversed.

Claims 33 and 34; Rejected under 35 U.S.C. § 103(a)

Claims 33 and 34 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Edhardt* (‘446) in view of *Aielli* (U.S. Patent No. 6,186,523). The deficiencies of *Edhardt* as a reference are discussed above. *Aielli* discloses a dolly having pivoting arms and an attachable container. The container includes “two spring pin brackets.” A spring pin bracket, typically, includes two side plates and a base forming a U-shape, a pin having a spring flange and a spring disposed about the pin and between a side plate and the spring flange. *See e.g.*, U.S. Patent No. 4,087,977, Figure 7, Reference # 74. Such a mechanical device is substantially different than either a “tab” (Claim 33) or a “rail” (Claim 34).

Moreover, similar to the description of the clamping device in *Edhardt*, the description of the spring pin bracket of *Aielli* is non-enabling. That is, based on the description and the figures provided, it is not clear how two spring pin brackets stay coupled to the pivoting handles. Spring pin brackets, typically, are used to couple two

elements in a generally fixed relationship. If one of the members is movable, the movable member may be simply pulled away from the pin. Thus, in *Aielli*, it is unclear how a spring pin bracket may be coupled to the movable handle in a manner that would link the container to the handles. Again, as set forth in MPEP § 2121.01, “The disclosure in an assertedly anticipating reference must provide an enabling disclosure of the desired subject matter; mere naming or description of the subject matter is insufficient, if it cannot be produced without undue experimentation.” *Id.*, citing *Elan Pharm., Inc. v. Mayo Found. For Med. Educ. & Research*, 346 F.3d 1051, 1054, 68 USPQ2d 1373, 1376 (Fed. Cir. 2003). Here, the reference merely states that there are two spring pin brackets and that they are coupled to the handles. Figure 3 is the only relevant figure with regard to the spring pin brackets and it merely shows a vertical extension with an opening without a pin. As such, one skilled in the art could not reproduce such a spring pin bracket structured to couple a container to a handle without undue experimentation. Accordingly, the *Aielli* reference is not an enabling reference and cannot be used as the basis for a rejection under 35 U.S.C. § 103(a).

Further, *Aielli* discloses that the tabs extend in a vertical direction. The direction of the tabs or rails extends is functional. That is, given that the handles pivot generally laterally, the tabs or rails must also extend laterally to engage the handles in a secure relationship. The extensions in *Aielli* must be disposed in the vertical orientation so that the spring pins extend horizontally so as to engage the openings (28). That is, if the extensions in *Aielli* extended horizontally, the spring pins would be disposed adjacent to the solid top surface of the handles. Such a configuration would render the *Aielli* spring pins inoperable. As such, the vertical extension disclosed in *Aielli* do not teach or suggest the lateral tabs as recited in Claims 33 and 34 of the present application.

Further, neither *Edhardt* nor *Aielli* teach, suggest, or provide an incentive supporting combination thereof. As set forth above, such a teaching, suggestion, or incentive supporting combination is required in order to properly combine two or more references. Here, the Examiner has merely identified two references having similar elements to those claimed in the present application. However, as set forth in MPEP §

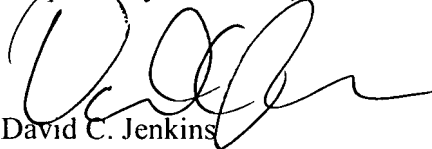
2143.01 III, “[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.” *Id.* citing *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

Accordingly, for these reasons, the combination proposed by the Examiner is not appropriate and the Examiner has failed to present a *prima facie* case of obviousness. That is, Claims 33 and 34 each recite a tray having lateral coupling elements, either tabs or rails. As the Examiner has stated that *Edhardt* fails to disclose lateral elements extending from the tray and as *Aielli* also fails to disclose lateral elements, and as these references cannot be combined as suggested by the Examiner, these references cannot be used to support a rejection under 35 U.S.C. § 103(a) and the rejection of Claims 33 and 34 should be reversed.

Conclusion

It is submitted that Claims 23-25, 27-34 and 36-50 are patentable over the prior art. Therefore, it is requested that the Board reverse the Examiner's rejections of Claims 23-25, 27-34 and 36-50 and remand the application to the Examiner for the issuance of a Notice of Allowance.

Respectfully submitted,



David C. Jenkins

Registration No. 42,691

Eckert Seamans Cherin & Mellott, LLC

600 Grant Street, 44th Floor

Pittsburgh, PA 15219

Attorney for Appellants

(412) 566-1253

APPENDIX 1 - CLAIM APPENDIX

1. to 22. (cancelled)

23. A wheelbarrow comprising, in combination:

a rigid front bracket;

a wheel rotatably secured to the front bracket and rotatable about a horizontally, laterally extending axis of rotation;

first and second handle arms pivotably attached to the front bracket;

a rigid tray; and

a clamping device extending between the first and second handle arms and removably applying a laterally-extending clamping force between the first and second handle arms to move the first and second handle arms relative to one another in a lateral direction and clamp the tray between the first and second handle arms.

24. The wheelbarrow according to claim 23, wherein the clamping device includes a flexible cable extending between the first and second handle arms.

25. The wheelbarrow according to claim 23, wherein the clamping device includes a rigid rod extending between the first and second handle arms.

26. (cancelled)

27. The wheelbarrow according to claim 23, wherein the tray is interconnected with the first and second handle arms to permit relative movement therebetween in a lateral direction and to prevent relative movement therebetween in each direction other than the lateral direction.

28. The wheelbarrow according to claim 23, wherein the first and second handle arms are laterally pivotably about the first and second spaced apart pivot axes respectively and the first and second pivot axes are laterally spaced apart.

29. The wheelbarrow according to claim 23, wherein the first and second handle arms each include telescoping upper and lower arms so that the upper arms are selectively movable between extended and retracted positions.

30. The wheelbarrow according to claim 23, wherein the front bracket is generally U-shaped having a laterally extending front section and first and second laterally spaced apart leg sections rearwardly extending from the front section and the first and second handle arms are pivotably attached to the front bracket at the first and second leg sections respectively.

31. A wheelbarrow comprising, in combination:
a rigid front bracket;
a wheel rotatably secured to the front bracket and rotatable about a horizontally, laterally extending axis of rotation;
first and second handle arms pivotably attached to the front bracket;
a rigid tray removably secured to first and second handle arms;
wherein the tray is interconnected with the first and second handle arms to permit relative movement therebetween in a lateral direction and to prevent relative movement therebetween in a forward-rearward direction; and
a clamping device extending between the first and second handle arms and removably applying a laterally-extending a clamping force between the first and second handle arms to move the first and second handle arms relative to one another in a lateral direction and clamp the tray between the first and second handle arms.

32. The wheelbarrow according to claim 31, wherein the tray is interconnected with the first and second handle arms to permit relative movement therebetween in a lateral direction and to prevent relative movement therebetween in each direction other than the lateral direction.

33. The wheelbarrow according to claim 31, wherein the tray has tabs extending laterally outward and the first and second handle arms have slots receiving the tabs.

34. The wheelbarrow according to claim 31, wherein the tray has rails extending laterally outward and the first and second handle arms have grooves receiving the rails.

35. (cancelled)

36. The wheelbarrow according to claim 31, wherein the first and second handle arms are laterally pivotable about the first and second spaced apart pivot axes respectively and the first and second pivot axes are laterally spaced apart.

37. The wheelbarrow according to claim 31, wherein the first and second handle arms each include telescoping upper and lower arms so that the upper arms are selectively movable between extended and retracted positions.

38. The wheelbarrow according to claim 31, wherein the front bracket is generally U-shaped having a laterally extending front section and first and second laterally spaced apart leg sections rearwardly extending from the front section and the first and second handle arms are pivotably attached to the front bracket at the first and second leg sections respectively.

39. The wheelbarrow according to claim 23, wherein the clamping force is adjustable.

40. The wheelbarrow according to claim 31, wherein the clamping force is adjustable.

41. The wheelbarrow according to claim 23, wherein the laterally-extending damping force is applied in a direction substantially parallel to the axis of rotation of the wheel.

42. The wheelbarrow according to claim 23, wherein the clamping force pulls the first and second handle arms toward one another to clamp the tray between the first and second handle arms.

43. The wheelbarrow according to claim 23, wherein the clamping device includes a tension member laterally extending between the first and second handle arms and having an adjustable length to selectively apply a tension force between the first and second handle arms and clamp the tray between the first and second handle arms.

44. The wheelbarrow according to claim 43, wherein the tension member includes a flexible cable extending between the first and second handle arms in a lateral direction substantially parallel to the axis of rotation of the wheel.

45. The wheelbarrow according to claim 43, wherein the clamping device includes a rotatable handle that increases and decreases the effective length of the tension member depending on the direction of rotation.

46. The wheelbarrow according to claim 31, wherein the laterally-extending clamping force is applied in a direction substantially parallel to the axis of rotation of the wheel.

47. The wheelbarrow according to claim 31, wherein the clamping force pulls the first and second handle arms toward one another to clamp the tray between the first and second handle arms.

48. The wheelbarrow according to claim 31, wherein the clamping device includes a tension member laterally extending between the first and second handle arms and having an adjustable length to selectively apply a tension force between the first and second handle arms and clamp the tray between the first and second handle arms.

49. The wheelbarrow according to claim 48, wherein the tension member includes a flexible cable extending between the first and second handle arms in a lateral direction substantially parallel to the axis of rotation the wheel.

50. The wheelbarrow according to claim 48, wherein the clamping device includes a rotatable handle that increases and decreases the effective length of the tension member depending on the direction of rotation.

APPENDIX 2 - EVIDENCE APPENDIX

The definition of “secured” - Exhibit A - as presented in the Response as filed on December 4, 2006.

The definition of “secured” - Exhibit B - as presented in the Response as filed on December 4, 2006.

The definition of “secured” - Exhibit C - as presented in the Response as filed on December 4, 2006.

APPENDIX 3 - RELATED PROCEEDINGS APPENDIX

None.